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Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; RUSSELL E. BURNS and JAMES
E. MURRAY, Trustees;

PENSION TRUST FUND FOR OPERATING
ENGINEERS; RUSSELL E. BURNS and JAMES E.
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS'
HEALTH AND WELFARE TRUST FUND;
RUSSELL E. BURNS and JAMES E. MURRAY,
Trustees;

OPERATING ENGINEERS AND PARTICIPATING
EMPLOYERS PRE-APPRENTICE, APPRENTICE
AND JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; RUSSELL E. BURNS and
JAMES E. MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3
VACATION, HOLIDAY AND SICK PAY TRUST
FUND; RUSSELL E. BURNS and JAMES E.
MURRAY, Trustees;

HEAVY AND HIGHWAY COMMITTEE; and

OPERATING ENGINEERS LOCAL 3 OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO,

Plaintiffs,

v.

Case No.

COMPLAINT

GARRETT THOMPSON CONSTRUCTION, INC.,
a California corporation, and GARRETT
THOMPSON, an individual,

Defendants.

Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California (which includes the Addiction Recovery Program, Inc.) ("Health Fund"); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, the Rehabilitation Plan, and the Operating Engineers Annuity Plan) ("Pension Plan"); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund ("Vacation Fund") (collectively referred to hereinafter as the "Trust Funds"), are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). Russell E. Burns and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, and Affirmative Action Training Fund and have authority to act on behalf of all Trustees of those Funds. Russell E. Burns and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Vacation Fund and have authority to act on behalf of all Trustees of the Vacation Fund. The Trust Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

2. The Heavy and Highway Committee is a Trust established under the Labor Management Relations Act ("LMRA"), 302(c)(9), 29 U.S.C. § 186(c)(9).

3. Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(5), and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

1 4. GARRETT THOMPSON CONSTRUCTION INC., a California corporation,
2 (“Defendant”), and GARRETT THOMPSON, an individual (collectively, “Defendants”), are employers
3 by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).
4

5 Jurisdiction

6 5. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of
7 ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of ERISA and the terms
8 of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress
9 such violations, and seek all other appropriate relief under ERISA.

10 6. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29 U.S.C. §
11 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

12 7. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
13 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
14 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
15 herein, each of which has a substantial ground in federal jurisdiction.

16 Venue

17 8. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action
18 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’
19 discretion, in the district where the plan is administered, where the breach took place, or where a
20 defendant resides or may be found, and process may be served in any other district where a defendant
21 resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this district at their principal
22 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this
23 Court.

24 9. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §
25 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business
26 in this district, its duly authorized officers or agents are engaged in representing employee members in
27 this district, and the claims arise in this district.

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Intradistrict Assignment

10. The basis for assignment of this action to this Court's Oakland Division is that all of the events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA Plaintiffs' Funds and the Bargained Plans are administered, and where Defendant therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

Bargaining Agreement

11. Defendant Garrett Thompson Construction, Inc. is a signatory to the Northern California Independent Construction Agreement. The aforementioned collective bargaining agreement is referred to herein as the "Bargaining Agreement." The Bargaining Agreement incorporates the Master Agreement between the Union and the United Contractors, Associated General Contractors of California, Inc., Industrial Contractors, UMIC, Inc., and Northern Alliance of Engineering Contractors. Defendant is also a signatory to a Non-Bargaining Unit Subscriber Agreement ("Subscriber Agreement"). The Bargaining Agreement and the Subscriber Agreement, which incorporate the terms of one or more of the Trust Agreements establishing the Trust Funds ("Trust Agreements"), require Defendant to provide employer contributions to Plaintiffs' Trust Funds, to the Union for union dues, and to other plans more fully described in the Bargaining Agreements. ERISA Plaintiffs are third-party beneficiaries of the Bargaining Agreements. Defendant Garrett Thompson personally guaranteed all amounts claimed herein under the Northern California Independent Construction Agreement.

12. Under the terms of the Bargaining Agreements, and Trust Agreements incorporated therein, Defendant is required to pay certain contributions to the Construction Industry Force Account; Contract Administration Fund; Job Placement Center and Market Area Committee Administration Market Preservation Fund; Operating Engineers Industry Stabilization Trust Fund; and Business Development Trust Fund (including the California Alliance for Jobs) (together referred herein as "Bargained Plans"). Plaintiffs' Boards of Trustees are assigned under the Bargaining Agreements to receive and administer monies due to these Bargained Plans.

13. Under the Bargaining and Subscriber Agreements and Trust Agreements, which are incorporated into the Bargaining Agreements and made binding on Defendant, Defendant is required to

1 regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the
2 amounts of which are determined by the hours worked by Defendant's employees. Contributions are due
3 on the fifteenth (15th) day of the month following the month in which hours were worked, and are
4 considered delinquent if not received by the twenty-fifth (25th) day of that month. Defendant is also
5 required, pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of
6 ten percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each
7 delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust
8 Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the
9 Trustees from the date they become delinquent, which is the twenty-sixth (26th) day of the month in
10 which payment was due, until paid in full.

11 14. The Bargaining, Subscriber and Trust Agreements further require Defendant to maintain
12 time records or time cards, and to permit an authorized Trust Fund representative to examine such
13 records of Defendant as are necessary to determine whether Defendant has made full payment of all
14 sums owed to ERISA Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to
15 provide full and prompt payment of all sums due to Plaintiffs, Defendant must reimburse Plaintiffs for
16 the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining
17 and Trust Agreements.

18 Factual Allegations

19 15. Defendant has failed and refused to pay contributions for hours worked by its employees
20 during the months of October 2018, December 2018, January 2019 and February 2019. Liquidated
21 damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for the
22 months of October 2018, December 018, January 2019 and February 2019 as well as those incurred on
23 Defendant's late-paid contributions for the months of June 2018, August 2018, September 2018 and
24 November 2018. Defendant has also failed to report and pay contributions for hours worked by its
25 employees for the month of March 2019.

26 16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated
27 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or
28

otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there are any additional amounts due from Defendant.

FIRST CAUSE OF ACTION

For Submission of Contribution Reports, Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendant

17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

18. Defendant has a contractual duty to provide reports of monthly amounts due, timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreement and Trust Agreements to permit an audit of their records to determine whether they are making full and prompt payment of all sums required to be paid by them to Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

19. In addition, Defendant has a statutory duty to timely make the required payments to Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

20. By failing to make the required reports and payments to Plaintiffs, Defendant breached the Bargaining and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

21. Defendant's failure and refusal to submit reports and pay the required contributions was at all times, and still is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with knowledge and intent.

22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to refuse to perform as required thereunder.

23. This Court is authorized to issue injunctive relief based on the traditional standard. As set

1 forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility
 2 that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of
 3 hardships and advancement of public interest favor ERISA Plaintiffs.

4 24. This Complaint does not in any manner relate to statutory withdrawal liability that may or
 5 may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such
 6 withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust
 7 Agreements, and the law.

8 Prayer

9 WHEREFORE, Plaintiffs pray as follows:

10 1. For a judgment against Defendant as follows:

11 (a) Any unpaid contributions, due at time of Judgment, including those specified
 12 above as well as any other contributions determined as due by audit, timecards, or otherwise, including
 13 estimated contributions for any months Defendant fails to report to Plaintiffs, pursuant to ERISA §
 14 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

15 i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA
 16 § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

17 ii. To the Union in accordance with the Bargaining Agreement.

18 (b) Liquidated damages on all late-paid and unpaid contributions in an amount
 19 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA
 20 § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

21 (c) Interest on all late-paid and unpaid contributions at the rates set in accordance
 22 with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. §
 23 1132(g)(2)(B).

24 2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in
 25 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
 26 with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all
 27 Plaintiffs.

3. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreement and the Trust Agreements;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and,

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendant's business until said terms have been complied with.

4. That the Court retain jurisdiction of this case pending compliance with its orders.

5. For such other and further relief as the Court may deem just and proper.

DATED: April 29, 2019

SALTZMAN & JOHNSON LAW CORPORATION

By: _____/S/

Tino X. Do

Attorneys for Operating Engineers' Health And
Welfare Trust Fund, et al.